ONG HER HOCK

v.

PUBLIC PROSECUTOR

COURT OF CRIMINAL APPEAL, SINGAPORE
WEE CJ
LP THEAN J
COOMARASWAMY J
[CRIMINAL APPEAL NO. 4 of 1985]
25 MAY 1986

CRIMINAL LAW AND PROCEDURE: *Appellant convicted for murder - Appeal - Evidence - Dying declaration - Whether properly admitted.*

The appellant was convicted after a trial of the murder of one Phua Ah Kau and he appealed against his conviction. The appellant contended that the dying declaration made by the deceased to three persons had been wrongly admitted in evidence and it was argued that for a dying declaration to be admissible, the exact words uttered by the deceased must be adduced in evidence by the person to whom these words were spoken.

Held:

[1] It is settled law that if a dying declaration is reduced to writing (and this would invariably be the case in the event of the witness in question being an investigating police officer, Magistrate or someone of that kind), the actual words of the deceased must be recorded.

[2] However, the recollection of the last words spoken by a dying man by a witness who is at the scene or arrives shortly thereafter and hears a dying declaration may properly be received in evidence - see *Toh Lai Hong v. Regina* [1961] 27 MLJ 53 at 54. Consequently, bearing in mind the facts of this case, the dying declaration was properly admitted.

[Appeal dismissed.]

Case referred to:

Toh Lai Hong v. Regina [1961] 27 MLJ 53

JUDGMENT

The appellant was convicted after a trial before Sinnathuray J and Wahab Ghows J of the murder of one Phua Ah Kau. We dismissed his appeal against his conviction and now give our reasons.

The deceased was in the business of distributing newspapers with a partner, Cheng Hock Peng. On 9 April 1982 Cheng left him at Block 152, Ang Mo Kio Avenue 5 at about 5.30 a.m. to await his return with newspapers for the deceased to distribute. While awaiting the return of his partner the deceased went to a coffee shop situated at Block 151 where he bought a tin of Horlicks. A few minutes later he was seen staggering along the corridor of the coffee shop with blood in his face and shirt. He requested the coffee shop assistant to call the police.

Soon after, the deceased's partner arrived at the scene and carried him to their Datsun pick-up which was parked nearby to await the arrival of an ambulance. The deceased's brother, Phua Chan Hooi, who had been called to the scene, asked the deceased whether the assault had anything to do with the newspaper business. The deceased answered in the negative.

He then asked the deceased who had stabbed him and the deceased replied in the Hokkien dialect that he had been stabbed by "Tiong Gi Tong Eh Lang" meaning "the people from Tiong Gi Tong Triad Society".

A little later the police arrived and a Corporal Subramani asked the deceased in Malay what had happened. He replied that two Chinese unknown to him were responsible for his injuries. Corporal Subramani asked him what weapon had been used and he said that they used a knife. He could not describe his assailants to Corporal Subramani.

The deceased was also asked by an ambulance officer who accompanied him in the ambulance which conveyed him to the hospital what had happened. He told the ambulance officer that two male Chinese who were unknown to him had stabbed him. At about 8.30 a.m. that same day the deceased died at the hospital from a deep stab wound which cut through his left lung and into his heart. He had another deep stab would which entered his liver and caused a considerable amount of bleeding. In all he had ten injuries, eight of which the pathologist described as superficial in his autopsy report. Some were slash wounds, some cut wounds, some abrasions or scratches and some stab wounds. The two serious stab wounds, one of which was the fatal wound, were inflicted on the back of the deceased. The appellant, who surrendered to the Police Criminal Investigation department on 23 September 1980, made three statements to the police. In all his statements he admitted inflicting the injuries with a knife during the course of an attack by the deceased who had charged at him armed with a knife. At that time he had a friend standing beside him who took no part in the incident. The appellant at the trial repeated the story he had told the police that the deceased had attacked him armed with a knife and he demonstrated to the Court how he managed to disarm and stab the deceased. The trial Judges rejected his defence. They found that during his cross-examination he kept changing his stories and embellishing them and that his demonstrations were unconvincing. They found that he and an accomplice caught the deceased who was unarmed unaware and stabbed him without any provocation on his part.

Apart from the grounds of appeal usually raised that the conviction was against the weight of the evidence and that the defence was not sufficiently considered which were not seriously argued and which were in our opinion without any merit, it was contended that the "dying declarations" made by the deceased to his brother, to Corporal Subramani and to the ambulance officer had been wrongly admitted in evidence. It was argued that to be admissible the exact words uttered by the deceased must be adduced in evidence by the person to whom those words were spoken.

In our opinion, while it is settled law that "if a dying declaration is reduced to writing - and this would invariably be the case in the event of the witness in question being an investigating Police Officer, Magistrate or someone of that kind - the actual words of the deceased must be recorded", the recollection of the last words spoken by a dying man by a witness who is at the scene or arrives shortly thereafter and hears a dying declaration may properly be received in evidence (see *Toh Lai Hong v. Regina* [1961] 27 MLJ 53 at p. 54). In the present case the witnesses gave evidence of their recollection of the last words spoken by the deceased and their evidence were, in our judgment, properly admitted.

At the conclusion of the hearing we were in no doubt that the trial Judges were justified on all the evidence before them in finding the appellant guilty of the offence of murder.

For all these reasons we dismissed the appeal.

Also found at [1986] 2 CLJ 488